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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,647	12/22/2000	Aman Gupta	GEMS8081.055	4528

27061 7590 01/26/2005

ZIOLKOWSKI PATENT SOLUTIONS GROUP, LLC (GEMS)
14135 NORTH CEDARBURG ROAD
MEQUON, WI 53097

EXAMINER


MCCLELLAN, JAMES S

ART UNIT PAPER NUMBER

3627

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No.	Applicant(s)	
	09/747,647	GUPTA ET AL.	
	Examiner	Art Unit	
	James S McClellan	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Appeal Brief

1. In view of the Appeal Brief filed on 10/4/04, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

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For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences) and therefore are found to be non-statutory subject matter. For a process, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 1 fails to include a positive limitation in the body of the claim that places the invention clearly within the technological arts. As currently presented, claim 1 includes method steps that can be performed manually without the use of technology. For example, the database in claim 1 is not necessarily an electronic or computer database. Applicant can overcome this 101 rejection by amending claim 1 to include a limitation that clearly states the steps are conducted using technology.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,809,479 (Martin) in view of U.S. Patent No. 6,032,121 (Dietrich).

Regarding claim 1, Martin discloses a method for reporting status of work in progress comprising the steps of: periodically querying a database (14; see Figure 1; see also column 2,

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lines 48-49) that contains data indicating an order number (inherent), a promise date (see column 3, lines 57-61), a request date (see column 3, lines 27-55, “customer-preferred ship date”), and a shipment date (see column 4, line 2, “customer-expected delivery date”); comparing the promise dates and the request dates (see column 3, line 56 – column 4, line 23). Regarding claim 8, it is noted that Martin notifies a customer when there is a discrepancy between the promise date and the request date (see column 4, lines 3-4).

Martin fails to disclose setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive alerts with the order numbers. If there is a discrepancy between the promise date and request date, Martin merely recognizes the discrepancy and reschedules (see column 3, line 56 – column 4, line 23).

Dietrich teaches the use of method of “proactive” planning (as required by claim 1) in real-time (as required by claim 5) to provide advance warnings (see column 2, lines 58-61; see also column 6, lines 25 – column 7, line 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin with the proactive warning (alert) taught by Dietrich, because an early warning system reduces the chance that undesired events will occur.

It is noted that Martin fails to clearly disclose data related to product category of products or services. The Examiner takes Official Notice that it is old and well known to identify product categories for product orders.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin with data related to product categories as is well known in the art,

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because providing additional product order data related to product category allows users to better analyze product order data.

6. Claims 2, 3, 7, and 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Dietrich as applied to claim 1 above, and further in view of U.S. Patent No. 6,322,502 (Schoenberg) .

Martin and Dietrich disclose all the limitations as set forth above but fail to explicitly disclose setting a reactive alert if a shipment date exists and the request date is less than a user-defined number of days prior to a current date.

Schoenberg teaches the use of reactive alerts (see column 5, lines 39-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin/Dietrich with reactive alerts as taught by Schoenberg, because the use of reactive alerts are helpful management tools for correcting problems when undesired activities have already occurred.

Response to Arguments

7. Applicant's arguments filed January 24, 20054 have been fully considered. However, all arguments are moot in view of the new grounds rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

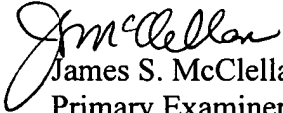
Any response to this action should be mailed to:

Commissioner of Patent and Trademarks
Washington D.C. 20231

or faxed to:

(703) 872-9306 (Official communications) or
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,
Arlington, VA, 7th floor receptionist.


James S. McClellan
Primary Examiner
A.U. 3627

jsm
January 24, 2005